IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

RFA.No. 1 of 2006()

OS.595/1995 of PRL.SUB COURT,TRIVANDRUM
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APPELLANTS/ADDITIONAL DEFENDANTS 4 AND 5
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1. LIVINGSTON, T.C.38/2999, CHENTHITTA, CHALAI, THIRUVANANTHAPURAM.

2. KINGSTON, T.C.38/2999, CHENTHITTA, CHALAI, THIRUVANANTHAPURAM.

BY ADV. SRI.R.S.KALKURA

RESPONDENTS: PLAINTIFF-DEFENDANTS 1 TO 3
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1. D.V.KUMARI RAJANI, D/O.DAVAKI AMMA, T.C.48/1097, KADAYARA VEEDU, AMBALATHARA, THIRUVANANTHAPURAM.

2. P.INDIRA, JAYACHANDRA BHAVAN, PANGAPPARA, THIRUVANANTHAPURAM.

3. SUJIT, RESIDING AT JAYACHANDRA BHAVAN, PANGAPPARA, THIRUVANANTHAPURAM.

4. SREEJITH, RESIDING AT JAYACHANDRA BHAVAN, PANGAPPARA, THIRUVANANTHAPURAM.

BY ADV. SRI.V.SURESH
SRI.G.SUDHEER
SRI.P.C.HARIDAS

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 13/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

R.F.A.No.1 of 2006

Dated this the 13th July, 2007.

J U D G M E N T

The additional defendants 4 and 5 in O.S.No.595/1995, on the file of the Principal Sub Court, Thiruvananthapuram, are the appellants. The first respondent-plaintiff filed the suit for declaration of title and possession, recovery of possession, fixation of boundary, a decree of permanent prohibitory injunction, and for other reliefs. Originally, there were three defendants in the suit. Subsequently, appellants were impleaded as additional defendants, as defendants 1 to 3 had assigned their right over the property in favour of appellants. Appellants appeared before the trial court and filed a written statement. When the case came up for trial, it was pointed out that the counsel who was appearing for appellants had appeared for the plaintiff in some other proceedings, in respect of the same property. The plaintiff had filed an affidavit stating that the same counsel had appeared for him in an earlier proceedings. So, the Advocate appearing for the appellant submitted before the trial court that he has relinquished the vakalath for appellants. The learned Subordinate Judge took a view that the defendants in the case failed to appear

before the trial court on the date on which the case was posted for trial, without any reasonable cause. Therefore, accepting the affidavit filed by the plaintiff, the suit was decreed and all the reliefs prayed for in the suit was granted. Challenging that decree and judgment, this appeal is filed.

2. It is true that the parties were not present in the court on that date. It is not a universal law that in every case, even if it is posted for trial, parties shall be present. The question of presence may arise only if a party proposes to give oral evidence. He can very well cross examine the plaintiff. In this case, because of an affidavit filed by the opposite side, the counsel who appeared for the defendants had to relinquish his vakalath. The action of the advocate relinquishing vakalath is correct. He did not raise a contention that he was entitled to represent the defendants in this case.

3. In **Raghu Raj Shukla v. II Additional District Judge** (2004 (24) ILD 196 (ALL.), the leanred Single Judge of the Allahabad High Court held that, in such cases, the Court shall give a reasonable opportunity to the party to engage another counsel. In this case, the manner in which the trial court disposed of the suit is illegal

and unsustainable. Hence, I have no other option, but to set aside the decree and judgment passed by the trial court, and remand the case, for fresh disposal, in accordance with law.

4. In the result, the appeal is allowed. The decree and judgment passed in O.S.No.595/1995, on the file of the Principal Sub Court, Thiruvananthapuram, are hereby set aside, and the suit is remanded. The learned Sub Judge is directed to take suit back to its file and dispose of the same, after giving reasonable opportunity to both sides to adduce evidence.

Being a suit of 1995, the learned Subordinate Judge shall make every endeavour to dispose of the suit, as expeditiously as possible, in any case, within four months from the date of receipt of a copy of this judgment.

Parties shall appear before the court below on 10.8.2007.

K.PADMANABHAN NAIR,
JUDGE

nj.